IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6025 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

G S R T S

Versus

ARJANDAS D PUNJABI

Appearance:

1. Special Civil Application No. 6025 of 1989

MR PRANAV G DESAI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/10/2001

ORAL JUDGEMENT

1. None appears for the respondent though served.

2. The petitioner, Gujarat State Road Transport

Corporation, has approached this Court under Article 227 of the Constitution challenging the award of the Labour Court, Vadodara in Reference (LCV) No.145/84 under which it was ordered to reinstate the respondent with full backwages.

3. The respondent, a driver, was chargesheeted for the alleged misconduct of negligence in performance of his duty on account of having committed an accident on 12.2.1982 in which a passer-by on the road was killed. After holding a departmental enquiry, the respondent was found to be guilty of the misconduct and, therefore, he was ordered to be dismissed by order dated 21.10.1983. The respondent having challenged the order of dismissal in the Labour Court, Vadodara and having relied upon the record of the enquiry without either party leading any further evidence, the Labour Court discussed the evidence on record and arrived at the finding of fact that the accident was not occasioned exclusively due to the negligence of the respondent. It is noted that the bus was not driven at an excessive speed at the relevant time and the victim of the accident had also not taken any care to avoid the accident. It is also noted that the respondent was acquitted in the criminal case due to default on the part of the prosecution.

4. In view of the clear finding of fact that the accident had not happened entirely due to the negligence of the driver, it can safely be inferred that the respondent was responsible for the accident to some extent. The learned counsel for the petitioner has vehemently submitted that in view of such finding of fact, it was necessary to impose some punishment and the order of reinstatement with full backwages imposed no punishment at all. It was also pointed out that while admitting this matter in 1989, this Court had, by way of interim relief, ordered the petitioner to deposit 75% of the due backwages and permit the respondent to withdraw the same. In these facts and circumstances, it would be just and proper to reduce the award of backwages by 25% by way of punishment. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that the respondent shall be entitled to 75% of the backwages. Rest of the award shall remain intact. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-
11.10.2001 (D.H.Waghela, J.)
(KMG Thilake)